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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,672	03/30/2004	Theodore John Cole	VIBP-0001-UT1	3562
22506 7590 02/26/2008 JAGTIANI + GUTTAG 10363-A DEMOCRACY LANE FAIRFAX, VA 22030				
EXAMINER ARNOLD, ERNST V				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
02/26/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,672

Applicant(s)

COLE ET AL.

Examiner

ERNST V. ARNOLD

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/29/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-18 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 2, 19 and 20 have been cancelled. Claims 1, 3-18 and 21-25 are pending and under examination. Applicant's amendments have necessitated a new ground of rejection. Accordingly this action is FINAL.

Withdrawn rejections:

Applicant's amendments and arguments filed 11/29/07 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 7-13, 16-18, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by The Jewelry Factory Web date of February 24, 2001 (<http://web.archive.org/web/20010224065357/www.crystalbiz.com/Jewelry/custompg.htm>).

The Jewelry Factory instructs one to mix and match naturally occurring elements including chariote, red tourmaline which is rubellite (as demonstrated by the Examiner in the previous Office Action) and reproduced below for Applicant's benefit.

The Jewelry Factory

Custom Jewelry

We are happy to offer custom jewelry service for our customers. To design your own piece pick a faceted stone from our list of selections, pick a complementing base stone, and choose whether you would like a Sterling Silver or 14K mounting. Contact us to place your order. Custom pieces are priced individually, based on the size and quality of the stones available.

Faceted Stones Available:

Amethyst	Hessonite Garnet	Sapphire
Aquamarine	Iolite	Sapphire (Fancy)
Blue Apatite	Kunzite	Spinel
Chrome Diopside	Mexican Fire Opal	Sunstone
Citrine	Moldavite	Tanzanite
Danburite	Morganite	Tourmaline - Blue
Emerald	Peridot	Tourmaline - Green
Garnet	Phenacite	Tourmaline - Pink
Golden Beryl	Rhodolite Garnet	Tsavorite Garnet
Herkimer	Ruby	

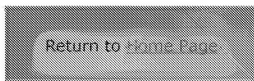
Base Stone Selections:

(Although this is not the entire inventory of stones available - we find these to be well suited to fine custom jewelry.)

Amber	Fluorite	Sapphire
Amethyst - Vera Cruz	Herkimer Diamond	Seraphinite
Ametrine (Faceted Tongues)	Hiddenite	Siberian Blue Quartz
Blue Apatite	Iolite	Siberian Gold Quartz
Blue Chalcedony	Kunzite	Siberian Green Quartz
Aquamarine	Kyanite	Siberian Purple Quartz
Azurite	Labradorite	Siberian Blends
Black Star Diopside	Lapis	Smithsonite
Blue Flash Moonstone	Larimar	Smokey Citrine
Blue Opal	Lepidocrosite	Spectrolite

Boulder Fire Opal	Lepidolite	Strawberry Quartz
Bustamite	Moldavite	Sugilite
Charoite	Montana Agate	Sunstone
Chrysacolla	Morganite	Topaz
Chrysoprase	Opal	Topaz - Imperial
Citrine	Peridot	Tourmaline - Blue
Danburite	Pietersite	Tourmaline - Green
Diopase	Psilomelane	Tourmaline - Neon
Drusy Chrysacolla	Quantum Quattro Silica	Tourmaline - Pariba
Drusy Clear Quartz	Quartz (Faceted Tongue)	Tourmaline - Pink
Drusy Cobaltite	Quartz - Tourmalinated	Tourmaline - Red
Drusy Green Garnet	Rhodocrosite	Tourmaline - Watermelon
Drusy Psilomelane	Rose Quartz	Turquoise
Drusy Titanium Quartz	Ruby	Wulfenite
Emerald	Ruby - Star	Zoisite
Eudialyte	Rutilated Amethyst	

TO ORDER CALL: 1-800-805-2554



One of ordinary skill in the art can envision the instantly claimed combinations from the list above in the forms of rings, necklaces, pendants and pins which are all known to one of ordinary skill in the art and read on "devices". Furthermore, since the Jewelry Factory informs the user that this is not the entire inventory of stones available one can simply to look to their other webpage for more possibilities which include rhyolite. At least a 1:1 ratio of naturally

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occurring elements is anticipated by the reference. Custom pieces are suggested by the reference.

This Easy Reference Guide from the same website is reproduced below for Applicant's benefit.

EASY REFERENCE GUIDE EXPLORING THE ENERGIES AND HEALING PROPERTIES OF STONES	
<u>Page A</u>	Amazonite, Amber, Amethyst, Amethyst - Rubellated, Ametrine, Angelite, Aqua Aura, Aquamarine, Art Quartz, Axinite, and Azurite.
<u>Page B</u>	Black Star Obsidian, Black/Brown Obsidian, Black Tourmaline , Bloodstone, Blue Apatite, Blue Aventurine, Blue Chalcedony, Blue Flash Moonstone, Blue Lace Agate, Blue Opal, Blue Quartz, Blue Tourmaline , Boulder Fire Opal, and Bustamite.
<u>Page C</u>	Carnelian, Chortite, Chrome Diopside, Chrysocolla, Chrysoprase, Citrine, Clear Quartz and Cobaltite.
<u>Page D</u>	Danburite, Diopase, Drusy Azurite, Drusy Clear Quartz, Drusy Cobaltite, Drusy Green Garnet, Drusy Psilomelane (Merlinite), and Drusy Titanium Quartz.
<u>Page E thru G</u>	Emerald, Eudialyte, Fluorite, Garnet, Golden Apatite, Golden Beryl, Green Aventurine, Green Obsidian, Green Phantom Quartz, and Green Tourmaline .
<u>Page H thru K</u>	Hematite, Herkimer Diamond, Hessonite Garnet (Gomed), Hiddenite, Imperial Topaz, Iolite, Jade, Kunzite, and Kyanite.
<u>Page L thru M</u>	Labradorite, Lapis, Larimar, Lepidocrocite, Lepidolite, Malachite, Meteorite, Mexican Fire Opal, Moldavite, Montana Agate, Moonstone, Morganite, and Moss Agate.

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<u>Page N thru P</u>	Nebula Stone, Neon Quartz, Neon Tourmaline , Onyx, Opal, Paraisba Tourmaline , Peridot, Phenacite, Picasso Marble, Pietersite, Pink Tourmaline , Psilomelane (Merinite), and Pyrite.
<u>Page Q</u>	Quantum Quartz Silica, Quartz - Art, Quartz - Clear, Quartz - Neon, Quartz - Rutillated, Quartz - Smokey, Quartz - Tourmalinated, Quartz - White Aura.
<u>Page R</u>	Rainbow Obsidian, Red Tourmaline (Rubellite), Rhodocrosite, Rhodolite Garnet, Rhodonite, Rhyolite , Rose Quartz, Ruby, Ruby - Star, and Rutillated Quartz.
<u>Page S</u>	Sapphire, Seraphinite, Serpentine, Siberian Blue Quartz, Siberian Gold Quartz, Siberian Green Quartz, Siberian Purple Quartz, Silver Platinum Quartz, Smithsonite, Smokey Citrine, Smokey Quartz, Snowflake Obsidian, Sodalite, Spectrolite, Spinel, Strawberry Quartz, Sugilite, and Sunstone.
<u>Page T</u>	Tanzanite, Tibellite, Tiffany Stone, Tiger Eye, Titanium Quartz, Topaz, Topaz - Imperial, Tourmaline - Black, Tourmaline - Blue, Tourmaline - Green, Tourmaline - Neon, Tourmaline - Paraisba, Tourmaline - Pink, Tourmaline - Red, Tourmaline - Watermelon, Tourmalinated Quartz, Tsavorite Garnet, and Turquoise.
<u>Page U thru Z</u>	Variscite, Watermelon Tourmaline , White Aura Quartz, Wulfenite, Zincoite, and Zoisite.

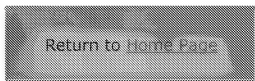
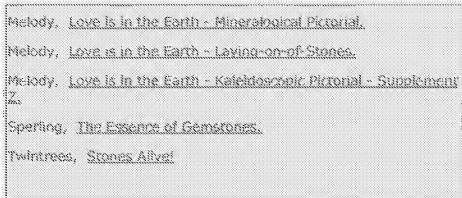
There are a number of references that you might want to investigate if you are looking for an intensive discussion about the energies and healing properties of different stones.

Conway, **Crystal** Enchantments: A Complete Guide to Stones.

Elsbeth, **Crystal** Medicine.

Melody, Love is in the Earth - A Kaleidoscope of Crystals.

Melody, Love is in the Earth - Kaleidoscopic Pictorial - Supplement A.



Please note in the Easy Reference Guide that the Jewelry Factory states red tourmaline is rubellite thus supporting the Examiner's position during the prosecution of this case. Pendants comprising the instant combination have straps to go around the neck and reads on instant claims 7, 8 and 11. A pin comprising the instant combination on a shirt reads on instant claim 9. A chair with a person wearing the jewelry sitting in the chair reads on instant claim 10. A ring made of the instant combination covers a portion of the finger and therefore serves as a coating and reads on instant claim 12. A small enough piece of jewelry is ingestible and reads on instant claims 13 and 17. One wearing the jewelry inherently reads on the method claims 16 and 18. In conclusion the instantly claimed combinations of naturally occurring elements are anticipated by jewelry.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-18 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elsbeth M. Crystal Medicine Llewellyn Publications St. Paul Minnesota USA 2000 in view of The Jewelry Factory Web date of February 24, 2001 (<http://web.archive.org/web/20010224065357/www.crystalbiz.com/Jewelry/custompg.htm>).

Applicant claims a composition or device of naturally occurring elements.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Elsbeth, herein incorporated by reference, teaches making tinctures and elixirs of gemstones (page 80). Elsbeth teaches making sun and moon water tonic (page 83). Elsbeth teaches making medicine wheels with 33 stones (page 104). Elsbeth teaches a wide variety of stones including pearl (see chapter 8 especially page 191-192). Elsbeth teaches that one should harvest the stone and tell the stone that you have come as a friend and protector and then ask the stone to tell you its properties and how it may help you (pages 49-50). Elsbeth teaches that after the stone provides the answers one should thank the rock spirit (page 50).

The reference of the Jewelry Factory is discussed in detail above and that discussion is hereby incorporated by reference.

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

1. The difference between the instant application and Elsbeth is that Elsbeth do not expressly teach the instant combination of naturally occurring elements. This deficiency in Elsbeth is cured by the teachings of the Jewelry Factory.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

1. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make any combination of naturally occurring elements and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because Elsbeth teaches one to go out and harvest stone and then make tinctures and elixirs and wheels etc... The reference of the Jewelry Factory teaches different types of naturally occurring stones that one might find and talk to. Any combination of stones would be obvious in the absence of evidence to the contrary. Especially when Elsbeth teaches that the stones communicate with the user and could inform the user to make the combinations instantly claimed as well as ingest them or put them into furniture or turn them into paint or anything else. The instantly claimed method is intrinsic to drinking the gemstone tinctures and elixirs as taught by Elsbeth.

From recent case law: "the results of ordinary innovation are not the subject of exclusive rights under the patent laws." (KSR INTERNATIONAL CO. v. TELEFLEX INC. ET AL. 550 U. S. ____ (2007) page 24).

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976).

In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of

ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (6:15 am-3:45 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 1616

/John Pak/
for Johann R. Richter, Supervisory Patent Examiner, Art Unit 1616